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7 Attorneys for Plaintiff

8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 THERESA BROOKE, a married woman  
11 dealing with her sole and separate claim,

12 Plaintiff,

13 vs.

14 SKY HARBOR FULLERTON LLC, a  
15 Delaware limited liability company,

16 Defendant.

Case No:

**VERIFIED COMPLAINT**

**(JURY TRIAL DEMANDED)**

17 Plaintiff Theresa Marie Brooke alleges:

18 **PARTIES**

19 1. Plaintiff Theresa Brooke is a married woman. Plaintiff is legally disabled,  
20 and is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2),  
21 the regulations implementing the ADA set forth at 28 CFR §§ 36.101 et seq., the  
22 California Unruh Civil Rights Act. Plaintiff ambulates with the aid of a wheelchair due  
23 to the loss of a leg.

24 2. Defendant, Sky Harbor Fullerton LLC, owns and/or operates and does  
25 business as the hotel Fullerton Marriott at California State University, 2701 Nutwood  
26 Avenue, Fullerton, California 92831. Defendant's hotel is a public accommodation  
27 pursuant to 42 U.S.C. § 12181(7)(A), which offers public lodging services. On  
28 information and belief, Defendant's hotel was built or renovated after March 15, 2012.

**JURISDICTION**

3. Jurisdiction in this Court is proper pursuant to 28 U.S.C. §§ 1331 and 42 U.S.C. § 12188.

4. Plaintiff's claims asserted herein arose in this judicial district and Defendant does substantial business in this judicial district.

5. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and (c) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

6. Pursuant to *Arroyo v. Rosas*, supplemental jurisdiction is appropriate over Plaintiff's Unruh claim. On a case-specific analysis, there are no compelling reasons to decline jurisdiction.

**ALLEGATIONS**

7. Plaintiff alleges that Defendant's hotel does not have a compliant access aisle at the passenger loading zone adjacent to the hotel lobby in violation of Sections 209 and 503 of the 2010 Standards. An access aisle has specific requirements to be compliant with the Standards: It must be (1) 60 inches wide and at least 20 feet long, (2) it must have an accessible route adjoining it, and (3) it cannot be within a vehicular way. Section 503.3.

8. The requirement for an access aisle at a passenger loading zone is immensely important for a person in a wheelchair such as Plaintiff, as it provides safe access to the entry of the hotel and deters others from placing encumbrances or obstacles there such as a vehicle parking. An access aisle is akin to a cross-walk for pedestrians. Absence of an access aisle where required creates dangerous conditions for a person in a wheelchair such as Plaintiff.

9. Plaintiff formerly worked in the hospitality industry and her husband works in the travel industry. She and her husband are avid travelers to California for purposes of leisure travel and to "test" whether various hotels comply with disability access laws. Testing is encouraged by the Ninth Circuit Court of Appeals.

1           10. Plaintiff traveled to Orange County in December 2022 for testing ADA  
2 compliance and leisure travel. She anticipates returning to Orange County several times  
3 in the next year for testing, leisure and checking on compliance with past testing.  
4 Plaintiff also has concrete plans to lodge at Defendant's hotel in July 2023, but she will  
5 not honor her concrete plans if Defendant has not provided notice of remediation by  
6 then.

7           11. During this trip, Plaintiff personally visited Defendant's hotel.  
8 Defendant's hotel has a passenger loading zone because pickup and dropoff occurs  
9 there and it is located directly outside of the lobby entrance. There are also design  
10 features showing an intent for utilization as a passenger loading zone. For example,  
11 there is a *porte cochere*, which by definition is a design feature for passenger loading  
12 zones. According to the U.S. Access Board Technical Guidelines on Passenger Loading  
13 Zones, passenger loading zones are so common at hotels that even it recognizes "many  
14 hotel entrances" have the design features indicating an intent to utilize as PLZs.

15           12. While at Defendant's hotel, she discovered that Defendant's hotel has a  
16 barrier to entry to the lobby, which is that the passenger loading zone does not have an  
17 access aisle compliant with Section 503.3. It is an absolute requirement to have an  
18 access aisle at a passenger loading zone pursuant to Sections 209 and 503. The  
19 requirement of an access aisle at a passenger loading zone relates to Plaintiff's  
20 disability of not having one leg and being forced to use a wheelchair because access  
21 aisles are required so persons in a wheelchair can maneuver without threat of danger  
22 from other vehicles and without other encumbrances blocking their pathway. The  
23 lobby, therefore, is inaccessible to Plaintiff by way of the passenger loading zone  
24 because there is no access aisle.

25           13. Plaintiff gained actual and personal knowledge of a barrier while visiting  
26 Defendant's hotel (no access aisle at passenger loading zone), and as a result, she was  
27 deterred from entering the hotel. She anticipates returning to this hotel and has concrete  
28 plans to do so in July 2023 (see above), but she will only lodge at the hotel if Defendant

1 puts the required access aisle into place and gives notice of such remediation before her  
2 definitive return. Visiting otherwise would be futile because the lack of the access aisle  
3 represents a barrier to entering the lobby.

4 14. It is readily achievable to modify the hotel to provide an access aisle.  
5 Provision of an access aisle is extremely inexpensive; it involves painting and  
6 measuring tools.

7 15. Without injunctive relief, Plaintiff and others will continue to be unable to  
8 independently use Defendant's hotel in violation of her rights under the ADA.

9 **FIRST CAUSE OF ACTION**

10 16. Plaintiff incorporates all allegations heretofore set forth.

11 17. Defendant has discriminated against Plaintiff and others in that it has  
12 failed to make its public lodging services fully accessible to, and independently usable  
13 by, individuals who are disabled in violation of 42 U.S.C. § 12182(a) and §  
14 12182(b)(2)(iv) and the 2010 Standards, as described above.

15 18. Defendant has discriminated against Plaintiff in that it has failed to  
16 remove architectural barriers to make its lodging services fully accessible to, and  
17 independently usable by individuals who are disabled in violation of 42 U.S.C.  
18 §12182(b)(A)(iv) and the 2010 Standards, as described above. Compliance with the  
19 2010 Standards would neither fundamentally alter the nature of Defendant's lodging  
20 services nor result in an undue burden to Defendant.

21 19. In violation of the 2010 Standards, Defendant's hotel passenger loading  
22 zone does not have a disability access aisle compliant with Section 503.3 of the  
23 Standards.

24 20. Compliance with 42 U.S.C. § 12182(b)(2)(A)(iv) and the 2010 Standards,  
25 as described above, is readily achievable by the Defendant. *Id.* Readily achievable  
26 means that providing access is easily accomplishable without significant difficulty or  
27 expense.  
28



1 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 2 a. Declaratory Judgment that at the commencement of this action Defendant  
3 was in violation of the specific requirements of Unruh; and
- 4 b. Permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) and 28 CFR §  
5 36.504(a) which directs Defendant to take all steps necessary to bring its  
6 passenger loading zone into full compliance with the requirements set  
7 forth in the ADA;
- 8 c. Payment of costs and attorney's fees;
- 9 d. Damages in the amount of \$4,000.00; and
- 10 e. Provision of whatever other relief the Court deems just, equitable and  
11 appropriate.

**DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a jury trial on issues triable by a jury.

13  
14 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of January, 2023.

15 /s/ P. Kristofer Strojnik

16 P. Kristofer Strojnik (242728)

17 Attorneys for Plaintiff

18 **VERIFICATION**

19 I declare under penalty of perjury that the foregoing is true and correct.

20 DATED this 11<sup>th</sup> day of January, 2023.

21  
22 

23  
24  
25 Theresa Marie Brooke